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MEMORANDUM

DATE: June 25, 2010

TO: PACE Organizations
State Approving Agencies
CMS Central Office and Regional Office PACE Team
National PACE Association

FROM: Heidi Arndt
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Medicare Drug & Health Plan Contract Administration Group

SUBJECT: PACE Organization's use of Nurse Practitioners in the PACE Program

The ability of some PACE organizations to recruit qualified physicians serving a frail geriatric population is becoming increasingly difficult. CMS has received multiple requests for waivers that would permit nurse practitioners to conduct services that, as set forth in the PACE regulations are currently assigned to the primary care physician.

PACE organizations seeking a waiver to use nurse practitioners should follow the attached practices. If you have any questions concerning this guidance, please contact John Hebb at 410-786-6657, or via email at: john.hebb@cms.hhs.gov.

Guidance for PACE Organizations (PO) to Use Nurse Practitioners (NP) in the PACE Program

I. Purpose:

The purpose of this memo is to provide guidance to any PACE organization seeking a waiver available under Section 903 of the Benefits Improvement and Protection Act of 2000 (BIPA) to use NPs to conduct services that, as set forth in the PACE regulations, are currently assigned to the primary care physician. In this memo, the Centers for Medicare & Medicaid Services (CMS) has outlined the required NP practices that an organization must address within its waiver submission package.

II. State Attestations

Interpretation of individual state law, with regard to Nurse Practitioner scope of practice, is beyond CMS' purview. States shall include a statement of attestation when forwarding an organization's waiver request to CMS for review. That attestation must indicate that the proposed arrangement, outlined in the waiver request, is in compliance with the state's Nurse Practice Act and any other applicable state law.

III. PACE Regulations

At a minimum, the organization should consider the following provisions of the PACE regulation prior to submitting a waiver request to utilize NP:

- 460.26-Submission and Evaluation of Waiver Requests;
- 460.64-Personnel Qualifications for Staff With Direct Participant Contact;
- 460.71-Oversight of Direct Participant Care;
- 460.98-Service Delivery;
- 460.102-Interdisciplinary Team;
- 460.104-Participant Assessment; and
- 460.136-Internal Quality Assessment and Performance Improvement Activities

IV. Definition

Collaboration is defined as inter-professional process for communication and decision making that enables the separate and shared knowledge and skills of care providers to influence the patient care provided.

V. Practices

At a minimum, the PO should submit policies and procedures summarizing the way in which it intends to meet the following guidelines:

- NP must be licensed as a registered nurse in the State in which he/she practices.
- NP shall have satisfactorily completed all of the education requirements by the State in which he/she practices.
- NP must submit evidence of current certification by a national certifying body.
- NP shall practice within his/her scope, as defined by the state laws, with regard to:
 - Physician oversight requirements
 - Practice authority
 - Prescriptive authority
- NP must have at least one year of experience with a frail or elderly population.
- NP must meet position-specific competencies prior to working independently.
- NP must be medically cleared for communicable diseases and have all immunizations up-to-date before engaging in direct participant contact.
- NP shall complete an orientation to the PACE model of care.
- NP shall be involved as part of the Interdisciplinary Team (IDT) along with the eleven required IDT members.
- NP shall practice collaboratively with the PO's medical director or PACE staff physician. As part of its waiver application, the PO shall submit policies and procedures explaining how the NP and the PO's medical director or PACE staff physician shall collaborate in the provision of assessments and reassessments required in §460.164 of the PACE regulations, in IDT meetings involving discussions of their patient, in the development of participants' plans of care in accordance with §460.104(b) of the PACE regulation, in the provision of primary care, and in participating in the PO's quality assessment and improvement activities in accordance with Subpart H.
- PO shall provide a contingency plan to address the way in which NP may collaborate with a physician in the limited instances where the PACE staff physician is not available.
- Consistent with §460.60(c) the PO medical director shall retain overall responsibility for the delivery of participant care, for clinical outcomes and for the implementation and oversight of the QAPI program.

VI. Submitting a Waiver Request: Review

Any PACE organization that identifies the need for a BIPA 903 waiver should include the following information in their waiver submission package:

- Identification that the submitted document is a waiver request

- Identification of the regulatory section the PO is requesting to have waived
- Rationale behind the waiver request
- If applicable, process that will be followed to ensure that participant care is not compromised
- Identification as to whether the issue was previously submitted as a BIPA 902 grandfathering request or if it is a new request under section 903 of the BIPA
- The PO's point of contact and contact information

Waiver requests may be submitted to the State with an application or independent of an application. Waiver requests submitted in conjunction with provider applications must be marked as separate documents by placing them in an independent envelope labeled "waiver request". Waiver requests submitted independent of an application, as stand-alone documents must also be clearly labeled "waiver request".

Waiver requests must be submitted to the State Administering Agency. The request will be reviewed by the State and then forwarded to CMS with any comments and concerns. CMS will arrive at a determination within 90 days of the receipt of the waiver request. For additional details regarding the submission and evaluation of waiver requests, please refer to 42 CFR § 460.26.